



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

खण्ड १६] शिमला, शनिवार, १७ फरवरी, १९६८/२८ माघ, १८८६ [संख्या ७

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१७ फरवरी, १९६८/२८ माघ, १८८६ को समाप्त होने वाले सप्ताह में निम्नलिखित विज्ञप्तियां 'समाधारण राजपत्र, हिमाचल प्रदेश' में प्रकाशित हुई :-

विज्ञप्ति की संख्या	विभाग का नाम	विषय
No. 4-198/67-Elec., dated the 9th February, 1968.	Election Department	The Delimitation of Wards of Municipal Committee Simla, Himachal Pradesh Rules, 1968.
No. 2-4/62-LSG-II., dated the 12th February, 1968.	Local Self Government Department	Approving the election of President, Municipal Committee, Rampur.

भाग १—वैधानिक नियमों को छोड़ कर हिमाचल प्रदेश के उप-राज्यपाल और हिमाचल बेंच आफ़ देहली हाई कोर्ट द्वारा अधिसूचनाएं इत्यादि

हिमाचल प्रदेश सरकार

thereof:—

LAW DEPARTMENT
NOTIFICATION

Simla-2, the 31st January, 1968

No. 6-27/67-LR.—The Administrator (Lieutenant Governor), Himachal Pradesh is pleased to constitute a Committee, to make suitable recommendations to the Government regarding Unification of Laws in Himachal Pradesh and to appoint the following as members

1. Shri Karam Singh, Minister for Law .. Chairman
2. Shri Ram Lal, Education Minister .. Member
3. Shri Tapinder Singh, M.L.A. .. Member
4. Shri Guman Singh, M.L.A. .. Member
5. Shri Hardy, M.L.A. .. Member
6. Shri Hardy Singh, Ex-M.L.A. .. Member
7. Shri Thakur Sen Negi, M.L.A. .. Member
8. Judicial Secretary to Himachal Pradesh Government. Member-Secretary.

2. The said Committee may study the various laws as applicable to the areas transferred to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and to the areas comprised in Himachal Pradesh immediately before 1st November, 1966, along with other relevant material received from the Administrative Departments concerned, and advise the Government as to which of the laws as in force in the two areas and with what modifications, if any, be enforced in the entire Himachal Pradesh with a view to having a unification of laws. In case the Committee is of the view that a new laws by repealing the existing laws on any subject, is necessary, the report may also be made to that effect.

3. The headquarter of the Committee shall be at Simla.

4. The Committee may submit its report to the Himachal Pradesh Government in the Law Department within two months of the issue of this Notification.

5. The Travelling Allowance and Daily Allowance of the non-official members shall be charged to head "10-General Administration-Secretariat and Headquarters-Establishment-Allowances, Honoraria, Travelling Allowance (Voted)". They shall be allowed Travelling Allowance and Daily Allowance as per annexure 'A'.

6. The Controlling Officer in regard to counter-signing the Travelling Allowance Bills in respect of the members mentioned in para 7 above, will be the Chief Secretary to the Government of Himachal Pradesh.

7. This issues with the concurrence of the Finance Department obtained vide their U.O. No. 12469, dated 14-12-1967.

ANNEXURE 'A'

TRAVELLING ALLOWANCE AND DAILY ALLOWANCE OF NON-OFFICIAL MEMBERS

(a) Travelling Allowance—

(i) *Journey by rail.*—They will be treated at par with Government servants of the First Grade and will be entitled to a single fare of the class of accommodation actually used, but not exceeding the fare to which the Government servants of the First Grade are normally entitled, i.e., accommodation of the highest class, by whatever name it may be called, provided on the railway by which the journey is performed excluding air condition accommodation plus an allowance for incidental expenses at the rate of 35 paise per every 10 kilometers or part thereof, if the journey exceeds 5 kilometers or part thereof, restricted to one daily allowance at the ordinary rate or at the rate of Rs. 3.00 whichever is more for every twenty-four hours of railway journey or part thereof.

(ii) *Journey by road.*—In respect of the journeys by road between places not connected by rail, a member will be entitled to road mileage admissible to an officer of the First Grade under the rules and at the rates as applicable to the employees of the Himachal Pradesh Government.

In a case where journey between two places connected by rail is performed by road, rail being the ordinary mode of travelling, the road mileage will be regulated as under:—

(i) When a journey is performed by taking a single seat in a public conveyance, he will be entitled to actual fare paid for a seat in a public conveyance plus incidentals admissible as for journey by rail, or the lower rate of road mileage limited to rail mileage, whichever is less.

(ii) When the journey is performed otherwise, the higher rate of road mileage, but limited to rail mileage will apply.

(b) *Daily allowance.*—(i) The members of the Vidhan Sabha will be entitled to daily allowance for each day of the meeting, except when the Vidhan

Sabha or a Vidhan Sabha Committee on which the member is serving, is in session, at the highest rate admissible to a Government servant of the First Grade for the respective locality, but limited to the rate as admissible to him as Member, Vidhan Sabha.

(ii) The non-official members (other than members of Vidhan Sabha) will be entitled to Daily Allowance for each day of the meeting at the highest rates admissible to a Government servant of the First Grade for the respective locality.

In addition to the Daily Allowance for the day(s) of the meeting, a member shall also be entitled to full daily allowance for the day preceding and/or the day following the meeting if:—

(i) he arrives in the forenoon of the day preceding the day of the meeting or on an earlier day; and/or

(ii) he departs at 12 noon or in the afternoon of the day following the day of the meeting or on a later day. But he will be entitled to only half daily allowance for the day preceding and/or the day following the meeting if—

(i) he arrives at 12 noon or in the afternoon of the day preceding the day of the meeting; and/or

(ii) he departs in the forenoon of the day following the day of the meeting.

Daily allowance will be subject to the usual conditions laid down in Supplementary Rule 73, as amended from time to time.

(c) *Conveyance Allowance.*—A non-official member, resident of at a place where the meeting of the Committee is held will not be entitled to travelling and daily allowances on the scales indicated above, but will be allowed only the actual cost of conveyance hire, subject to a maximum of Rs. 10.00 per day. Before the claim is actually paid, the controlling officer should verify the claim and satisfy himself, after obtaining such details as may be considered necessary, that the actual expenditure was not less than the amount claimed. In cases, he is not satisfied with the details, he may, at his discretion, limit the conveyance allowance to road mileage.

If such a member uses his own car, he will be granted mileage allowance at the rate admissible to officials of the First Grade subject to a maximum of Rs. 10 per day.

(d) The travelling and daily allowances will be admissible to a member on production of a certificate by him to the effect that he has not drawn any travelling or daily allowance for the same journey and halts from any other Government source.

(e) The non-official members will be eligible for travelling allowance for the journeys actually performed in connection with the meetings of the Committee from and to the place of their permanent residence to be named in advance. If any member performs journeys from a place other than the place of his permanent residence to attend a meeting of the Committee or returns to place other than the place of his permanent residence after the termination of the meeting, travelling allowance shall be worked out on the basis of the distance actually travelled or the distance between the place of permanent residence and the venue of meeting, whichever is less.

(f) The non-official members who are members of the Vidhan Sabha when the Vidhan Sabha or the Vidhan Sabha Committee on which the member is serving, is in session, will not be entitled to draw any daily allowance in connection with his assignment on the official

Committee, as they will be drawing their daily allowance under salaries and allowance of members of the Legislative Assembly, Himachal Pradesh Act, 1963 from the Vidhan Sabha. However, if they certify that they were prevented from attending the Session of the House or the Vidhan Sabha Committee, because of their work connected with the Committee, and did not draw any daily allowance from the Vidhan Sabha, they would be entitled to daily allowance at the rate as prescribed.

(g) The provision of Rule 224 of C.T.R. Vol. I will apply *mutatis mutandis* in the case of over-payments made on account of T.A. to non-official members.

(h) The members of the Vidhan Sabha concerned will also not draw travelling allowance and daily allowance (including conveyance allowance) which will disqualify them from the Vidhan Sabha.

D. B. LAL,
Secretary (Judicial).

भाग २—बैधानिक नियमों को छोड़ कर विभिन्न विभागों के अध्यक्षों और जिला मैजिस्ट्रेटों द्वारा अधिसूचनाएं
इत्यादि

शून्य

भाग ३—अधिनियम, विधेयक और विधेयकों पर प्रवर समिति के प्रतिवेदन, बैधानिक नियम तथा हिमाचल प्रदेश के उप-राज्यपाल, हिमाचल बेंच आफ देहली हाई कोर्ट, फाइनेंशियल कमिशनर तथा कमिशनर आफ इन्कम-टैक्स द्वारा अधिसूचित आदेश इत्यादि

शून्य

भाग ४—स्थानीय स्वायत्त शासन: म्युनिसिपल बोर्ड, डिस्ट्रिक्ट बोर्ड, नोटिफाइड और टाउन एरिया तथा पंचायत विभाग

शून्य

भाग ५—व्यक्तिक अधिसूचनाएं और विज्ञापन

THE SIMLA IMPROVEMENT TRUST SIMLA NOTICE

Notice is hereby given that in accordance with Resolution No. 13 (a), passed in its meeting held on 30-11-1967, the Simla Improvement Trust, Simla, has framed a development scheme under section 24 read with section 28(2) of the Punjab Town Improvement Act, 1922.

Area: 4,681 square yards approximately.

Location: The site is situated between the Circular Road and the Approach Road joining Ridge-Sanjoli Road with Circular Road near Snowdon Hospital, and adjoining the newly built Snowdon Hospital Nurses' Hostel.

The details of the scheme including statement of the land to be acquired, and general map of the locality, may be inspected at the office of the Trust, during office hours, on any working day.

Any person having any objection to the scheme, should forward it in writing to the Chairman, the Simla Improvement Trust, Simla, so as to reach him, within 30 days of the first publication of the notice.

NOTICE UNDER SECTION 36 OF THE PUNJAB TOWN
IMPROVEMENT ACT, 1922

The Mall Road Development Scheme

Notice is hereby given that in accordance with Resolution No. 4, passed in its meeting held on 11-1-1968, the Simla Improvement Trust, Simla, has framed a development scheme under section 24 read with section 28(2) of the Punjab Town Improvement Act, 1922. The scheme

comprises of 5 different plots of land as detailed below:—

Plot No. 1—AREA: 1,764 square feet approximately.

LOCATION: West of Rickshaw Shed on the Mall, below Municipal Gardens.

Plot No. 2—AREA: 2,100 square feet approximately.

LOCATION: East of Rickshaw Shed, between the Mall Road and the link road from the Mall to Ridge.

Plot No. 3—AREA: 1,644 square feet approximately.

LOCATION: Between the Mall and Ladies Park, West of Cotton and Morris Building.

Plot No. 4—AREA: 1,500 square feet approximately.

LOCATION: Between the Mall and the road to U.S. Club, East of Argyle House.

Plot No. 5—AREA: 1,200 square feet approximately.

LOCATION: Between the Mall and the link road from the Mall to Kelvin Grove.

The details of the scheme including statement of the lands to be acquired, and general maps of the locality, may be inspected at the office of the Trust, during office hours, on any working day.

Any person having an objection to the scheme, should forward it in writing to the Chairman, the Simla Improvement Trust, Simla, so as to reach him, within 30 days of the first publication of the notice.

NOTICE UNDER SECTION 36 OF THE PUNJAB TOWN
IMPROVEMENT ACT, 1922

Notice is hereby given that in accordance with Resolution No. 2, passed in its meeting held on 11-1-1968, the

Simla Improvement Trust, Simla, has framed a development scheme under section 24 read with section 28(2) of the Punjab Town Improvement Act, 1922.

Area:

4,017 square yards approximately.

Boundary:

NORTH-WEST: The road going from the Ridge to Lakkar Bazar.

NORTH-EAST: Road going to Ashoka Hotel and Ivy Lodge.

SOUTH-EAST: Hill side.

SOUTH-WEST: Regal Theatre.

The details of the scheme including statement of the land to be acquired, and general maps of the locality, may be inspected at the office of the Trust, during office hours, on any working day.

Any person having any objection to the scheme, should forward it in writing to the Chairman, the Simla Improvement Trust, Simla, so as to reach him, within 30 days of the first publication of the notice.

D. R. DHAMIJA,

Chairman,

The Simla Improvement Trust, Simla.

भाग ६—भारतीय राजपत्र इत्यादि में से पुनः प्रकाशन

सूच्य

भाग ७—भारतीय निर्वाचन आयोग (Election Commission of India) की वैधानिक अधिसूचनाएं तथा अन्य निर्वाचन सम्बन्धी अधिसूचनाएं

ELECTION DEPARTMENT NOTIFICATION

Simla-2, the 13th January, 1968

No. 6-66.67 Elec.—The following notification of Election Commission of India, dated the 1st December, 1967 is hereby published for general information.

ELECTION COMMISSION INDIA NOTIFICATION

New Delhi, the 1st December, 1967

No. 82/7 of 1967/H.P./67.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 20th October, 1967 by the High Court of Delhi, Himachal Bench, Simla in Election Petition No. 7 of 1967.

IN THE HIGH COURT OF DELHI HIMACHAL BENCH, SIMLA CIVIL ORIGINAL PETITION NO. 7 OF 1967 DATE OF DECISION 20-10-1967

Sadhu Ram etc. Petitioners through M. R. Gupta, Advocate.

Versus

Hira Singh Pal Respondent through Mr. H. S. Thakur, Advocate.

The Hon'ble Mr. Justice S.N. Andley.

1. Whether reporters of local paper may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?

CORAM:—

S. N. ANDLEY, J

This petition challenges the election of the respondent to the Himachal Pradesh Vidhan Sabha in the 1967 elections. The three petitioners are voters and electors.

A notification dated January 13, 1967 was issued by the competent authority under the Representation of People Act, 1951 (Act 43 of 1951), hereinafter referred to as "the Act" for election to the Himachal Pradesh, Vidhan Sabha from the 9—Arki Assembly Constituency of Himachal Pradesh.

Four persons, namely, Nagin Chand Pal; Kameshwar Pan lit; Hari Dass and the respondent, Hira Singh Pal, filed their nomination papers on or before January 20,

1967 which was fixed for the purpose. Nagin Chand Pal and Kameshwar Pandit aforesaid withdrew their candidature and there was a straight contest between the respondent and Hari Dass aforesaid.

Elections were held on February 18, 1967 and the result was declared on February 22, 1967. The respondent was declared elected upon the result of the poll which was as follows:

Hira Singh Pal, respondent	..	11,778	votes.
Hari Dass	..	4,070	votes.
Invalid votes	..	485.	

The petitioners, as electors whose names were entered in the voters list for the aforesaid constituency, filed this petition before the learned Judicial Commissioner, Himachal Pradesh at Simla on April 6, 1967 challenging the respondent's election mainly on two grounds. The first ground is that the statutory limit of election expenses, which for Himachal Pradesh had been placed at Rs. 2,000 had been exceeded by the respondent. The second ground is that the respondent was guilty of corrupt practices in issuing false statements and propaganda against Hari Dass.

The respondent, in his written statement, raised various preliminary pleas and, as to the two main grounds stated above, denied the same.

On account of Re-organisation of Himachal Pradesh, this election petition came to be dealt with by this Court. Issues were framed in this case by Hardy J. who also recorded a part of the evidence.

The first issue was formulated as follows:

"Whether the petition does not give necessary particulars of the corrupt practices alleged therein and if so what is its effect?

On June 8, 1967, the counsel for the respondent made a statement before Hardy J. that the respondent did not wish to press this issue but it was urged that the petitioners should not be allowed to lead any evidence in respect of instances other than those which have been specifically mentioned in paragraph 5 of the petition. Thereupon, Hardy J. recorded an order stating: "In view of the statement of the respondent's counsel the issue is decided in favour of the petitioners and against the respondent but the petitioners will not be allowed to lead any evidence which is not relevant to the instances that have already been given by them in the petition".

Thereafter, the parties went to trial on the other issues and led oral evidence and addressed arguments.

Paragraph 5-A of the petition which gave rise to issues 2 to 7 states:—

"The respondent was under a statutory obligation to maintain the accounts as required by section 77 of the Representation of the People Act, read with Rule 86 of the Conduct of Election Rules of 1961. The respondent could not incur more than Rs. 2,000 as his election expenses as prescribed by Rule 90 of the said Rules. The respondent has committed a breach of both these provisions as contained in the said Rules, apart from the flagrant disregard of section 77 of the Act. The respondent filed a Return of his election expenses before the District Election Officer on 23-3-1967 at Kasumpti showing Rs. 1,860.50 as his election expenses. In fact, he has not included in this amount the expenses of conveyance amounting to Rs. 1,828.44 P. as per detail given below:—

- (i) Hire charges for Taxi No. 4792 paid to the agent of the owner Shri Bakhshi Ram Rs. 400.00;
- (ii) Hire of Jeep Him No. 4235, Rs. 1,428.44 P. paid to Himachal Government Transport Department for use from 1-2-1967 to 19-2-1967.

This expense is directly in connection with his election and its omission will entail the necessary consequences under the law. The respondent paid Rs. 250 while applying for Congress ticket. He has not shown this expense in the Return. The respondent has forfeited also a sum of Rs. 500 to the Himachal Pradesh Congress Committee after the date of the publication of a notice of election and this amount has also been suppressed in the Return of election expenses. Thus the respondent has filed a false election expenses return in as much as large sums have been omitted with a view to cover up the lapse of transgressing maximum limit prescribed under the rules. An attested copy of election expenses submitted by the respondent is filed herewith as annexure 'A'."

In his written statement, the respondent answered these allegations thus:

"It is denied that the respondent committed the breach of Rule 86 or Rule 90 of the Conduct of Election Rules, 1961, and that he committed any disregard of section 77 of the Representation of People Act, 1951. He did not incur any expenditure over and above that shown in his election expenses return. He did not incur the expenses amounting to Rs. 1,828.44 P. as alleged in the petition.

The respondent did not hire Taxi No. 4792 at all. He did not also pay Rs. 400 to any body as hire charges for any such taxi. The petitioners in collusion and conspiracy with the defeated candidate, Shri Hari Dass, and other persons interested in him appear to have fabricated false evidence.

The respondent had not hired jeep No. HIM-4235, from the Himachal Pradesh Government Transport. The said jeep was hired by Shri Muni Lal, on behalf of the 'Lok Raj Samiti' and he paid the amount of Rs. 1,428.44 P. and not the respondent. Shri Hari Dass, who was then Transport Minister appears to have fabricated false evidence in this behalf.

The sum of Rs. 250 paid by the respondent to the Himachal Pradesh Congress for giving him Congress ticket for Kasumpti constituency was not an expense in furtherance of his election. In any case it was incurred long before 13-1-1967.

The sum of Rs. 500 as security for undertaking not to fight against a Congress candidate, in the event the ticket was refused was not an election expense and the same was paid much before 13-1-1967.

The petitioners filed a replication to the written statement and with reference to these allegations state: "Para 5-A of the written statement is wrong and is repudiated. Para 5-A of the Election Petition is reiterated in full being correct. It is wrong for the respondent to state that he did not hire Taxi No. 4792 and that he did not pay Rs. 400 as hire charges for the taxi to the agent of the owner Shri Bakhshi Ram. It is denied that the petitioners in collusion and conspiracy with Shri Hari Dass have fabricated any false evidence.

It is re-asserted that Jeep No. HIM 4235 was hired by the respondent for his election campaign and the payment was also made by him. There was no such party as 'LOK RAJ SAMITI' who was recognised by anybody. Shri Muni Lal was the staunch supporter of the respondent. It is admitted by the respondent that the jeep was hired by Shri Muni Lal, on behalf of the alleged 'Lok Raj Samiti'. The respondent has not denied that the jeep was not hired for his election campaign. The charges are also admitted. The words 'Lok Raj Samiti' must have been got written by the respondent or his supporter Shri Muni Lal, just to fabricate the evidence which was false to their knowledge. It is reiterated that the expenses of Rs. 1,428.44 P. on account of hire charges of the Jeep No. HIM-4235, were incurred by respondent for his election campaign and that he exceeded the limit of Rs. 2,000 as permitted under the Act.

The sum of Rs. 250 was covered under the election expenses.

The sum of Rs. 500 as security as mentioned in the Election Petition was forfeited after the date of withdrawal and this expense clearly falls under the election expenses which the respondent has deliberately omitted to mention in the return of election expenses. The respondent transgressed the maximum limit of the expenses prescribed under the Rules."

These pleadings gave rise, as stated above, to issues Nos. 2 to 7 which were framed thus:

- "2. Whether the respondent has kept separate accounts of election expenses and if so, what is its effect?
3. Whether the respondent has committed the corrupt practice of incurring or authorising the incurring of expenses more than Rs. 2,000 as detailed in para 5-A of the petition?
4. Whether the amount of Rs. 250 paid by the respondent as application fee for getting Congress ticket can be treated as forming part of the election expenses if so, what is the effect of his not showing the said sum in the return of election expenses?
5. Whether the amount of Rs. 500 paid by the respondent and forfeited to the Himachal Pradesh Congress Committee, as mentioned in para 5-A of the petition, is not a part of his election expenses. If so what is the effect of this amount not having been shown by the respondent in the return?
6. Whether the respondent, his agents and supporters with his consent hired Taxi No. 4792 for his election campaign and paid hire charges of Rs. 400 to the agent of the owner of the taxi?
7. Whether the Jeep HIM No. 4235 was hired by the respondent or his supporters and agents with his consent and he paid Rs. 1,428.44 as its hire charges to Himachal Pradesh Government Transport Department or the said amount was paid on his behalf to the said Department"

It may be stated that at the time of arguments Mr. M. R. Gupta, learned counsel for the petitioners, stated that he would not press issue No. 6.

So far as issue No. 2 is concerned, reference was invited to section 77 of the Act as amended by section 42 of the Representation of the People (Second Amendment) Act, 1956 (XXVII of 1956), hereinafter referred to as "the Second Amendment Act." Section 77 runs as under:—

"Account of election expenses and maximum thereof—

- (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive.
- (2) The account shall contain such particulars, as may be prescribed.
- (3) The total of the said expenditure shall not exceed such amount as may be prescribed."

Rule 86 of the Conduct of Elections Rules, 1961, hereinafter referred to as 'the Rules' provides:

"Particulars of account of election expenses.—(1) The account of election expenses to be kept by a candidate or his election agent under section 77 shall contain the following particulars in respect of each item of expenditure from day to day, namely:—

- (a) the date on which the expenditure was incurred or authorised;
 - (b) the nature of the expenditure (as for example, travelling, postage or printing and the like);
 - (c) the amount of the expenditure—
 - (i) the amount paid;
 - (ii) the amount outstanding;
 - (d) the date of payment;
 - (e) the name and address of the payee;
 - (f) the serial number of vouchers, in case of amount paid;
 - (g) the serial number of bills if any, in case of amount outstanding;
 - (h) the name and address of the person to whom the amount outstanding is payable.
- (2) A voucher shall be obtained for every item of expenditure unless from the nature of the case, such as postage, travel by rail and the like, it is not practicable to obtain a voucher.
 - (3) All vouchers shall be lodged along with the account of election expenses arranged according to the date of payment and serially numbered by the candidate or his election agent and such serial numbers shall be entered in the account under item (f) of sub-rule (1).
 - (4) It shall not be necessary to give the particulars mentioned in item (e) of sub-rule (1) in regard to items of expenditure for which vouchers have not been obtained under sub-rule (2)."

It is clear from a perusal of section 77 and rule 86 that the candidate or his election agent has to keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof.

It is admitted by the respondent that he had no election agent. Therefore, by the terms of this section, the accounts contemplated by section 77 of the Act were to be maintained by the respondent himself. The respondent has produced a copy book Exhibit RW. 6/1 while he was being examined in Court as his own witness which according to the respondent contains the account of all expenditure in connection with the election incurred or authorized by the respondent. The first page of this copy book is blank. The second page contains entries of expenses between

January 20, 1967 and January 28, 1967 showing a total of Rs. 1,487.90 paise. The third page shows entries of expenses incurred between February 16, 1967 and February 22, 1967. The third page also shows the total expenses incurred at Rs. 1,795.50 paise as expenses incurred in the aforesaid two periods and further shows an aggregate outstanding of Rs. 65.

In his statement, the respondent has stated:

"I did not make the entries in Ex. RW. 6/1 which is produced to-day. The entries in this account book are in the handwriting of Anant Ram. He was not my election agent. It is correct that signatures of Anant Ram or myself do not appear in Ex. RW. 6/1. Apart from Ex. EW 6/1, I have no other accounts relating to the election."

Although Anant Ram, the alleged writer of the entries in Exhibit RW 6/1 was cited as a witness for the respondent, he was not produced. The respondent's counsel made a statement on September 14, 1967 that he did not want to produce Anant Ram as a witness because the accounts will be produced by the respondent himself.

It is quite clear from the statement of the respondent himself that accounts have not been kept in accordance with the provisions of section 77 of the Act. Nor do the accounts contain the particulars as required by rule 86. The answer to the first part of the issue, therefore, is that the respondent has not kept separate accounts of the election expenses as required by law.

The question then is: what is the effect of the above finding? It is fairly conceded by the petitioners' counsel that the non-maintenance of accounts in accordance with the law or the rules is not one of the grounds under section 100 of the Act for the election to be void. My finding, therefore, is that even though the provisions of section 77 of the Act and of the rules in that behalf in so far as the keeping of separate accounts with particulars have not been complied with, the respondent's election on that ground alone cannot be set aside.

But, the petitioners' counsel has urged that the non-maintenance of proper accounts should weigh against the respondent while determining issues Nos. 3 to 7.

So far as issue No. 3 is concerned, it is the case of the petitioners that the respondent exceeded the statutory limit of Rs. 2,000 which was fixed for Himachal Pradesh for election expenses. Admittedly, the respondent has spent Rs. 1,860.50 paise out of which Rs. 1,795.50 paise are stated to have been incurred and Rs. 65 are stated to be outstanding. The total expenses including the outstandings fall short of Rs. 2,000 by Rs. 139.50 paise. The case of the petitioners as laid in the petition was that the respondent incurred the following further expenses in addition to the expenses shown, namely:—

1. A sum of Rs. 400 being hire charges for taxi No. 4792 paid to the agent of the owner Shri Bakshi Ram.
2. A sum of Rs. 500 paid to the Himachal Pradesh Congress Committee as application fee while applying for the Congress ticket in December, 1966.
3. A sum of Rs. 750 paid by the respondent to the Himachal Pradesh Congress Committee in December, 1966 as security for the Congress ticket.
4. A sum of Rs. 1,428.44 paise being the hire of Jeep HIM No. 4235 paid to the Himachal Pradesh Government Transport Department for use of this jeep from February 1, 1967 to February 19, 1967.

The amount of Rs. 400 is the subject matter of issue No. 6. This issue, as stated earlier, has been given up by the petitioner's counsel.

As to the amounts of Rs. 500 and Rs. 750 it may be stated that in the petition the application fee is stated as

Rs. 250 and the security is stated as Rs. 500. It is, however, the common case of the parties that in fact the respondent had paid to the Himachal Pradesh Congress Committee in December, 1966, Rs. 500 as application fee for the Congress ticket and Rs. 750 as security.

With regard to the application fee of Rs. 500 and the security amount of Rs. 750 the petitioners' case is that in accordance with the conditions of the application form (Exhibit P.W. 1/1) which was made by the respondent to the Himachal Pradesh Congress Committee while applying for a Congress ticket and the conditions laid down by the Himachal Pradesh Congress Committee, these amounts were refundable only if the respondent contested the election as a Congress candidate. It is further the petitioners' case that the application fee and the security were liable to be forfeited if the respondent contested the election against a Congress candidate. The petitioners have further alleged that the Himachal Pradesh Congress Committee refused to give its ticket to the respondent; that the respondent contested the election against the Congress candidate and that by letter dated February 6, 1967 (Exhibit P.W. 1/3) addressed by the Himachal Pradesh Congress Committee to the respondent, these two amounts of application fee and security were forfeited. The petitioners further contention is that the respondent became "a candidate" within the meaning of section 79(b) of the Act in December, 1966 when he paid these two amounts as, with the election in prospect, he began to hold himself out as a prospective candidate. For this last proposition the petitioners relied upon the decision of the Supreme Court reported in *S. Khader Sheriff v Munnuswami*, A.I.R. 1955 Supreme Court 775.

The respondent's answer is that these two amounts of Rs. 500 and 750 do not constitute election expenses within the meaning of section 77 of the Act as amended by the Second Amendment Act and they say that by virtue of the second amendment only such expenses are to be taken into consideration as election expenses as have been incurred or authorised between the date of the publication of the notification calling the election, which in this case was January 13, 1967, and the date of declaration of the result of the election, which in this case was February 22, 1967. They further say that the Himachal Pradesh Congress Committee had no right to forfeit any of these two amounts as they have purported to have done by their aforesaid letter dated February 6, 1967 (Exhibit P.W. 1/3).

Now, the Second Amendment Act was passed in 1956 after the aforesaid decision of the Supreme Court. Section 42 of this Act amended the law relating to election expenses as was contained in sections 44; 76; 77 and 78 in the Act prior to the amendment. As a result of this amendment only those expenses which were incurred by a candidate in relation to his election during the period specified in section 77 can be regarded as election expenses. The observations of the Supreme Court in the aforesaid judgement related to the Act as it stood prior to the second amendment and cannot be treated as law.

The petitioners contend that even if the second amendment has specified the period in section 77 of the Act as it stands now, these two amounts would still be election expenses as they should be deemed to have been incurred on or about February 6, 1967 which falls between the two dates specified when they were forfeited by the Himachal Pradesh Congress Committee by their letter P.W. 1/3. The question, therefore, is whether the Himachal Pradesh Congress Committee had any right to forfeit these two amounts. The petitioners have proved only the application (Exhibit P.W. 1/1) which was made by the respondent when applying for the Congress ticket and they

have not produced and proved any other document which might give any right to the Himachal Pradesh Congress Committee to forfeit these two amounts. One of the undertakings recorded in this application upon which the petitioners rely is in these terms:

"I hereby give an undertaking that if I am not selected for any constituency on behalf of the Congress, I will not contest any seat against any Congress candidate in this election and will support Congress candidates."

There is no condition in this application giving any right to the Himachal Pradesh Congress Committee to forfeit either the amount of application or the amount of security. In fact these amounts are not even mentioned in this application. In my opinion, this undertaking did not entitle the Himachal Pradesh Congress Committee to forfeit any of the two amounts.

The petitioners, however, contend that in view of the pleadings of the parties, the fact of the alleged forfeiture of these two amounts by the Himachal Pradesh Congress Committee stands proved. The allegation in paragraph 5-A of the petition which is relevant to these two amounts may be repeated. This is what the petitioners have stated:—

"The respondent paid Rs. 250 while applying for Congress ticket. He has not shown this expense in the Return. The respondent has forfeited also a sum of Rs. 500 to the Himachal Pradesh Congress Committee after the date of the publication of a notice of election and this amount has also been suppressed in the Return of Election Expenses."

It will thus be seen that no allegation of forfeiture has been made in respect of the amount of Rs. 250 (in reality Rs. 500) and there is a bare allegation that the amount of Rs. 500 (in reality Rs. 750) has been forfeited by the Himachal Pradesh Congress Committee after the date of the publication of the notice of election. The date of actual forfeiture of this amount of Rs. 750 is not mentioned, nor is it mentioned whether the alleged forfeiture was before or after the date of the declaration of the result. The defence of the respondent has, therefore, to be looked at in the light of these vague pleadings and the relevant defence contained in paragraph 5-A of the written statement is in these terms:—

"It is denied that the respondent committed the breach of rule 86 or rule 90 of the Conduct of Election Rules, 1961 and that he committed any disregard of section 77 of the Representation of People Act, 1951. He did not incur any expenditure over and above that shown in his election expenses return. The sum of Rs. 250 paid by the respondent to the Himachal Pradesh Congress for giving him Congress ticket for Kasumpti constituency was not an expense in furtherance of his election. In any case it was incurred long before 13-1-1967. The sum of Rs. 500 as security for undertaking not to fight against a Congress candidate, in the event the ticket was refused, was not an election expense, and the same was paid much before 13-1-1967."

In my opinion and in view of the vagueness of the allegations in the petition with regard to the alleged forfeiture, the answer contained in the respondent's written statement cannot amount to an admission of the allegations with regard to forfeiture. Even in the replication filed by the petitioners to the written statement, all that has been stated with regard to these two amounts is:—

"The sum of Rs. 250 was covered under the election expenses. The sum of Rs. 500 as security as mentioned in the Election Petition was forfeited after the date

of withdrawal and this expenses clearly falls under the election expenses, which the respondent has deliberately omitted to mention in the Return of Election Expenses."

Even in the replication the allegations as to these two amounts are not supported by any particulars as to the date of forfeiture, nor has any reference been made to any document in pursuance of or by which this forfeiture is alleged to have been effectuated. The further contention of the petitioners is that the right to forfeit and the actual forfeiture is proved by the statement of Amar Nath Bajwaria (P.W. 1) who states himself to be the permanent Secretary of the Himachal Pradesh Congress Committee. In this behalf, this witness has stated:—

"The last date of withdrawal of nomination papers for election to the Himachal Pradesh Legislative Assembly from 9-Arki constituency was 23-1-1967. As the respondent did not withdraw from the contest, the security of Rs. 750 deposited by him was forfeited to the Himachal Pradesh Congress Committee. A letter, copy of which is Exhibit P.W. 1/3, was sent by registered post to the respondent on 13-2-1967 informing him about the forfeiture of the security money and application fee deposited by him."

When asked in cross-examination about the alleged despatch of Exhibit P.W. 1/3, which was alleged to have been sent by registered post, this witness stated:—

"I have not brought with me the postal receipt or the postal acknowledgement about the receipt of Exhibit P.W. 1/3 by the respondent. I have, however, noted on the margin of Exhibit P.W. 1/3 the post office receipt number and the date of despatch of this letter to the respondent. I have not within Court any document showing that this letter Exhibit P.W. 1/3 was actually sent to the respondent. Nor have I any acknowledgement of the respondent with regard to the receipt of this letter by him."

It is, therefore, clear that the despatch of Exhibit P.W. 1/3 and the receipt thereof by the respondent has not been proved. This witness has further admitted in cross-examination that:—

"The security money and the application fee deposited by the respondent was forfeited by a resolution passed by the Pradesh Election Committee of the Congress, but in the absence of record, I cannot say when that resolution was passed. There is no mention of any resolution of the Pradesh Election Committee in the letter Exhibit P.W. 1/3. I cannot answer the question, as it is a question of law, as to whether the Pradesh Election Committee is entitled to forfeit the sum of Rs. 1,250 deposited by the respondent. I cannot even approximately say as to when the meeting of the Pradesh Election Committee was held. I can neither give the month nor the day. Dr. Y. S. Parmar, Shrimati Satyawati Dang, Shri Karam Singh, Shri Vidya Dhar and Shri Hari Dass were the members of the Pradesh Election Committee."

None of the members of this Pradesh Election Committee has been produced as a witness; the alleged resolution has not been produced and "the conditions laid down by the H.P.C.C." mentioned in Exhibit P.W. 1/3 have not been proved. Hari Dass, the defeated candidate, is admitted by this witness to have been a member of the Pradesh Election Committee and a party to the alleged resolution. Even he has not come forward as a witness.

In this state of evidence, I hold that the right to forfeit; the alleged forfeiture and the allegation of the forfeiture having been made during the period contemplated by section 77 of the Act have not been proved by the petitioners and issues Nos. 4 and 5 are answered against

the petitioners and in favour of the respondent.

I may also mention the further arguments which were addressed by Mr. H. S. Thakur, learned counsel for the respondent, in connection with the alleged forfeiture of the aforesaid two amounts. He contended (1) that the aforesaid two amounts had been deposited by the respondent with the Himachal Pradesh Congress Committee when he applied for the Congress ticket from the Kasumpti constituency that the respondent had not contested the election from the Kasumpti Constituency but from the 9-Arki Constituency and, therefore, the aforesaid two amounts could not be considered to be election expenses incurred in connection with the election from the 9-Arki Constituency; (2) that the agreement even if proved, giving a right to the Himachal Pradesh Congress Committee to forfeit the aforesaid two amounts on the breach of the undertaking given by the respondent was void under section 23 of the Indian Contract Act as the consideration for this agreement was opposed to public policy as it was in breach of every voter's right to contest an election; (3) that the aforesaid two amounts were liable to be refunded to the respondent under section 65 of the Indian Contract Act and (4) that since the aforesaid two amounts were not used for the election of the respondent, they could not constitute election expenses within the meaning of section 77 of the Act. It is not necessary for me to deal with any of these contentions in view of my finding that the right of the Himachal Pradesh Congress Committee to forfeit the amount and its actual forfeiture have not been proved.

The most contested issue in this case has been issue No. 7 which has been framed on the petitioners' allegation that Jeep Him No. 4235 was hired by the respondent and he paid Rs. 1,428.44 as its hire charges to Himachal Pradesh Government Transport Department or the said amount was paid on his behalf to the said department.

The pleadings of the parties in so far as issue No. 7 is concerned may be shortly stated again. In the petition, the petitioners merely state that the respondent has not included an amount of Rs. 1,428.44 which represented the expenses of conveyance which were paid by the respondent to the Himachal Pradesh Government Transport Department for use of Jeep HIM No. 4235 from February 1, 1967 to February 19, 1967. There is no allegation that this amount was incurred by the respondent through his election agent or any other person and the allegation can mean only one thing that this expense was incurred by the respondent himself. In his written statement, the respondent has denied that he had hired this Jeep as alleged. He has further stated that this Jeep was hired by Muni Lal (who has appeared as R. W. (1) on behalf of the 'Lok Raj Samiti' and that it was Muni Lal who had paid the amount of Rs. 1,428.44. The respondent has further alleged that the defeated candidate, Hari Dass, who was then the Transport Minister, appears to have fabricated false evidence in that behalf. In the replication, the petitioners reassert the hiring of this jeep by the respondent himself and they also reassert that the aforesaid payment was made by the respondent. It is for the first time in the replication that the petitioners have denied the very existence of the Lok Raj Samiti and it is further alleged that "the words 'Lok Raj Samiti' must have been got written by the respondent or his supporter Shri Muni Lal just to fabricate the evidence which was false to their knowledge. It is reiterated that the expenses of Rs. 1,428.44 on account of hire charges of the Jeep No. HIM 4235 were incurred by the respondent for his election campaign and that he exceeded the limit of Rs. 2,000 as permitted under the Act." Even in the replication the petitioners do not say that this Jeep was hired by Muni Lal with the consent of the respondent.

The only allegation with regard to Muni Lal is that he was a supporter of the respondent. Therefore, the case which the respondent was called upon to meet in connection with the use of Jeep HIM No. 4235 was that he himself had incurred the aforesaid expenses of Rs. 1,428.44. No case has been pleaded by the petitioners that the aforesaid expenses had been authorised by the respondent. Nor have the petitioners alleged that the aforesaid expenses was incurred by "any other person with the consent of the respondent" or by the respondent's agent.

Sub-section (1) of section 77 of the Act required the keeping of a separate and correct account of all expenditure in connection with the election incurred or authorized by the candidate or by his election agent. Sub-section (3) of section 77 provides that such expenses should not exceed the prescribed amount.

Section 100 of the Act contains the ground for declaring an election to be void. Clause (b) of sub-section (1) provides one of such ground the ground being:—

"that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent."

It will, therefore, be seen that while section 77 of the Act imposes a liability for maintenance of the account upon the candidate or his election agent, clause (b) or sub-section (1) of section 100 makes the returned candidate responsible for any corrupt practice which has been committed by him or by his election agent or by any other person with his consent or the consent of his election agent.

Section 123 of the Act mentions certain acts which are to be deemed to be corrupt practices for the purpose of the Act. In addition to an election agent or any other person acting with the consent of the returned candidate, this section uses the word "agent" which has been defined by the Explanation to this section as including "an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate" but this inclusive definition is for the purposes of this section alone. In spite of the words "or his election agent or by any other person with the consent of a returned candidate or his election agent" used in section 100 (1) (b) of the Act, different expressions have been used in section 123 with reference to different corrupt practices. Sub-section (1) (A) which relates to bribery uses the words "or his agent or by any other person with the consent of a candidate or his election agent." Sub-section (1) (B) (a) which relates to gratification refers only to a "candidate". Sub-section (2) which refers to undue influence or interference mentions "the candidate or his agent, or any other person with the consent of the candidate or his election agent." Sub-section (3) which relates to appeals on the ground of religion etcetra mentions "a candidate or his agent". Sub-section (3) (A) which relates to promotion of feelings of enmity or hatred mentions "a candidate or his agent or any other person with the consent of a candidate or his election agent." Sub-section (4) relating to publication of false statements mentions "a candidate or his agent or by any other person with the consent of a candidate or his election agent". Sub-section (5) which relates to the hiring or procuring of any vehicle etcetra mentions "a candidate or his agent or by any other person with the consent of a candidate or his election agent". Sub-section (7) which relates to obtaining or procuring of assistance from specified classes of Government servants mentions "a candidate or his agent or by any other person with the consent of a candidate or his election agent." But sub-section (6) which refers to unauthorized expenditure merely states the corrupt

practice to be "the incurring or authorizing of expenditure in contravention of section 77". Reading sub-section (6) of section 123 only with reference to section 77, the conclusion can only be that this corrupt practice can be committed only by the candidate or his election agent and, so read, cannot include "any other person with the consent of the candidate or his election agent" as mentioned in sub-clause (b) of sub-section (1) of section 100 unless such consent is equivalent to an authorisation by the candidate or his election agent.

The corrupt practice alleged in this case is a contravention of section 77 of the Act which has been committed by payment of the hire amount of Rs. 1,428.44 in respect of Jeep HIM No. 4235. The corrupt practice is for incurring or authorising of expenditure in contravention of section 77 of the Act. The word "incurring" necessarily postulates a pecuniary liability on the candidate himself even though the expense may have been authorized by the candidate or his election agent.

The Supreme Court had occasion to deal with section 123 (7) of the Act prior to its amendment. As it then stood, sub-section (7) of section 123 related not only to the incurring or authorizing of an expenditure in contravention of section 77 but also to the employment of a prescribed number of persons. In the case before their Lordships which is reported in A.I.R. 1954. Supreme Court 749 (*Ranajaya Singh V. Baijnath Singh and others*) the allegation was that the father of the candidate has assisted his son by placing at the disposal of the son in the matter of his election the employees of the father. If such persons were to be included, the number of employed persons would have exceeded the prescribed limit. In repelling the contention that the candidate had been guilty of a corrupt practice, the Supreme Court observed:—

"There can be no doubt that in the eye of the law these extra persons were in the employment of the father of the appellant and paid by the father and they were neither employed nor paid by the appellant. The case, therefore, does not fall within section 123 (7) at all and if that be so, it cannot come within section 124 (4). It obviously was a case where a father assisted the son in the matter of the election. These persons were the employees of the father and paid by him for working in the estate. At the request of the father they assisted the son in connection with the election which strictly speaking they were not obliged to do. Was the position in law at all different from the position that the father had given those employees a holiday on full pay and they voluntarily rendered assistance to the appellant in connection with his election? We think not. It is clear to us that "qua" the appellant these persons were neither employed nor paid by him. So far as the appellant was concerned they were more volunteers and the learned Advocate for the respondents admits that employment of volunteers does not bring the candidate within the mischief of the definition of corrupt practice as given in section 123 (7).

The learned Advocate, however, contended that such a construction would be against the spirit of the election laws in that candidates who have rich friends or relations would have an unfair advantage over a poor rival. The spirit of the law may well be elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed

according to the ordinary, grammatical and natural meaning of their language they work injustice by placing poorer candidates at a disadvantage the appeal must be to Parliament and not to this Court. On a consideration of the relevant provisions of the Act and the rules and the arguments advanced before us we are of opinion that the appellant cannot in the circumstance of this case be held to be guilty of any corrupt practice under section 123 (7) as alleged against him that not having incurred any expenditure over and above what was shown by him in his return of election expenses he cannot be said to have concealed such expenditure and, therefore, he cannot be held to have been guilty of any minor corrupt practice under section 124 (4) of the Act."

The word "incur" was construed by a Division Bench of the Rajasthan High Court in the case reported in (*Sheopat Singh V. Narnihchandra*), A.I.R. 1958 Rajasthan 324 where the allegation was that a vehicle had been lent gratuitously to a candidate and it was claimed that the reasonable hire of this vehicle should have been included in the return of expenses. Relying upon the above observations of the Supreme Court, the learned Judges say:—

"This brings us to the next point which is that assuming that a vehicle is lent gratuitously to a candidate is reasonable hire for the vehicle to be shown as election expenditure? In other words, is the reasonable hire of a vehicle lent gratuitously an expenditure which the candidate should be presumed to have incurred or authorized? To our mind, it is not one incurs expenditure when one actually spends money. One authorises expenditure when one incurs a pecuniary liability. In borrowing a vehicle, which the lender lends gratuitously, no pecuniary liability is incurred."

A Divisional Bench of the Assam High Court has dealt with a similar question in the case reported in A.I.R. 1959, Assam 139 (*Biresh Misra V. Ram Nath Sarma and others*) where it has been stated:

"One cannot be said to incur an expense unless he actually spends the money. The expenditure also cannot be said to have been authorized unless any pecuniary liability is incurred by a person. Any vehicle therefore lent gratuitously to a candidate by his friends does not involve incurring of any pecuniary liability by the candidate. In cases, therefore, where the vehicles are lent by friends gratuitously, it cannot be said that any expenditure was incurred or authorized by the candidate....."

It was not necessary for the respondent to show in his account the reasonable rent of the vehicles lent to him by his friends without charging from him."

The Madras High Court in its judgement reported in (*M.A. Muthian Chettiar V. Sa. Ganesan*), A.I.R. 1960 Madras 85 has also accepted the meaning given to the word "incur" in A.I.R. 1958 Rajasthan 324.

On the pleadings of the parties and the law as laid down in the above authorities, it is necessary for the petitioners to prove that the aforesaid amount of Rs. 1,428.44 in respect of the hire of Jeep HIM. No. 4235 was actually incurred by the respondent himself or, in the absence of an election agent as in this case, by any other person under an authorization of the respondent. Issue No. 7 and the evidence in this case have really proceeded beyond the pleadings in so far as the petitioners have made an attempt to show that even if the hiring of the aforesaid jeep was by Muni Lal (E.W. 1), Convener of the Lok Raj Samiti, such hiring must be deemed to be with the consent of the respondent. The petitioners cannot enlarge the scope of their pleadings by evidence and, therefore, the only question for

determination in so far as the amount of Rs. 1,428.44 is concerned are whether the respondent himself had incurred this expense or whether Muni Lal had been authorized by the respondent to incur this expenditure. The petitioners have made an attempt to show that the various documents in respect of this jeep were camouflaged in so far as they showed the name of the said Muni Lal (R. W. 1) as the hirer of this jeep.

The evidence discloses that Jeep HIM No. 4235, belonged to Himachal Pradesh Government Transport who hired out jeeps to various candidates and political parties during the last elections. The first document in this connection is a letter dated January 28, 1967 (Exhibit RW. 1/3) which was written by Muni Lal (RW. 1) who described himself as the Convener of the Lok Raj Samiti, Himachal Pradesh and is addressed to the Regional Manager, Himachal Transport requesting the allotment of one jeep "for the Samiti for the elections on February 1, 1967.....". This document which was challenged by the petitioners as a document got up subsequently was produced by Zarfur Ram, (P.W. 5) who was summoned by the petitioners themselves with the records of the Himachal Government Transport where this witness was a booking clerk. He produced the entire records relating to the hiring of Jeep HIM No. 4235. This letter, therefore, came from proper custody. When it was produced by this witness, it was marked "A" by me for purposes of identification upon the objection of the learned counsel for the petitioners that he had not summoned this letter. Upon this objection, this witness stated that he had been asked by the petitioners counsel to bring all the records. No suggestion was made at the instance of the petitioners to this witness that this document did not form part of the relevant file or that it was a document which had been got up subsequently. I, therefore, hold that the genuineness of the aforesaid letter, which was subsequently exhibited as R.W. 1/3 during the examination of Muni Lal (R.W. 1), cannot be doubted.

The next document is what may be called the "transport ticket" (Exhibit P.W. 3/1) issued by the Himachal Pradesh Transport Department containing the amount of hire of Rs. 1,428.40; the number of this jeep; the dates on which this jeep was used and an endorsement "full election duty with Shri H. S. Pal". Reliance is placed by the petitioners upon the aforesaid endorsement on this ticket to say that this jeep was hired by the respondent. This document was proved by Prem Dass Abrol (P.W. 3) Regional Transport Manager, who states:—

"A sum of Rs. 1,428.40 was received by my office for the hire of this jeep on the dates mentioned in the duplicate ticket Exhibit P.W. 3/1. The ticket is signed by my clerk Zarfur Mal and is in respect of election duty with Shri H. S. Pal. The original of this ticket was handed over to the hirers."

Zarfur Ram (P.W. 5) has also deposed about this ticket and he says:—

"The particulars of this ticket are in my handwriting and I issued this ticket. The words "election duty with Shri H. S. Pal" have also been written by me on the face of this ticket. From the counterfoils of the tickets which I have brought, I can say that some counterfoils bear the names of persons to whom tickets were issued. Name of the purchaser of a ticket is mentioned on the ticket only when the ticket is purchased on credit. Although the name of Shri H. S. Pal is mentioned on ticket Exhibit P.W. 3/1, the bills for the amount of charges was sent to the Lok Raj Samiti."

In cross examination this witness has admitted that the hire for this jeep was received by him and that the hire

charges were paid by Muni Lal (R. W. 1). In re-examination by the petitioners, this witness has further admitted that the bill for this vehicle was prepared in the name of the Lok Raj Samiti in pursuance of the aforesaid letter dated January 28, 1967 (Exhibit R.W. 1/3).

It is obvious that the respondent is not a party to the endorsement on this ticket and he has categorically denied having ever hired this jeep for purposes of his election. As I have already stated, the petitioners had to prove that it was the respondent himself who incurred the hire expenses pertaining to this jeep. The answer of the petitioner is that they have proved this fact. They argue that if the Lok Raj Samiti had actually paid the hire amount, they should have produced their account books which are admittedly maintained by them and, in the absence of the account books, a presumption should be drawn against the respondent that it was not the Lok Raj Samiti or Muni Lal (R. W. 1) but the respondent himself who had incurred the expenses for hiring this jeep. Reliance is placed upon illustration (g) to section 114 of the Indian Evidence Act. This illustration says:

"That evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it."

I do not think that the said illustration (g) would bear that interpretation. The burden for proving a corrupt practice lies very heavily upon the person making the allegation. It has been held in A.I.R. 1965 Supreme Court 183 (*Jagdev Singh Sidhanti V. Pratap Singh Daulta and others*):—

"In the trial of an election petition, the burden of proving that the election of a successful candidate is liable to be set aside on the plea that he was responsible directly or through his agents for corrupt practices at the election, lies heavily upon the applicant and unless it is established in both its branches, i.e. the Commission of acts which the law regards as, corrupt, and the responsibility of the successful candidate directly or through his agents or with his consent for its practice not by mere preponderance of probability but by cogent and reliable evidence beyond any reasonable doubt, the petition must fail."

The test which, therefore, has been laid down by the Supreme Court is the same as applicable to the trial of criminal cases. There is no question of a shifting burden. The burden remains throughout upon the petitioners who make the allegations. The mere omission of the respondent to summon the account books of the Lok Raj Samiti cannot, therefore, lead to a presumption against him as is contemplated by illustration (g) to section 114 of the Indian Evidence Act. It is true that when the respondent summoned Muni Lal (R.W. 1) convener of the Lok Raj Samiti, the petitioners had served a notice upon him to produce the account books of this Samiti. The account books were not brought by Muni Lal (R.W. 1). He admitted that this Samiti maintained accounts but he states that the account books were with the Treasurer, Lal Chand Stokes. It is not as if the petitioners were unaware of the existence or even the alleged existence of the Lok Raj Samiti. They were made aware of this fact by the written statement of the respondent. In spite of this awareness, the petitioners did not summon any witness of this Samiti with its account books at the time when the petitioners were giving their own evidence. Even after the statement of Muni Lal (R. W. 1) that the account books were with the treasurer, Lal Chand Stokes, the petitioners did not make any application for summoning Lal Chand Stokes. It is, therefore, not possible to draw any presumption by the Lok Raj Samiti of its accounts because it cannot be said that it was the respondent who withheld the accounts.

My conclusion, in so far as the transport ticket (Exhibit P.W. 3/1) is concerned, is that in the absence of any evidence that the respondent was a party or privy to the endorsement "full election duty with Shri H. S. Pal" on this document and in the absence of any proof that the respondent had withheld the account books of the Lok Raj Samiti, the petitioners have failed to prove that the respondent had incurred the amount mentioned in this document.

The next document on which reliance has been placed is that "check slip Way-bill" (Ex. P.W. 3/2) dated February 1, 1967 issued by the Himachal Government Transport in respect of this Jeep HIM No. 4235. This document indicates the journeys which were undertaken by this jeep between February 1 to 9, 1967 and February 11 to 19, 1967 the details of the journeys shown in this document have been entered by the driver Uttam Chand (P.W. 4) various places are mentioned in this document as having been visited. All of them except Solan, Kandaghat, Simla, Sabathu, Jawal and Nambhol are in the 9-Arki Constituency. The evidence is that even the places mentioned above are contiguous to the 9-Arki Constituency. The petitioners have further emphasized the fact, as appearing from this document, that most of the journeys indicated are from and to Domehar which is the respondent's village. The petitioners argue that these facts clearly indicate that it was the respondent and nobody else who was using this Jeep HIM. No. 4235 for purpose of his election. Reliance is also placed by the petitioners upon an endorsement (Exhibit P.W. 3/2-A) on this document stating in the hand of Muni Lal (R.W. 1)—"Certified that the above journeys were undertaken by the Samiti candidate for election purposes." In the original has a longer leg than the letter 'e' in the other words used and this 'e' ends in what appears to be a big dot. To my mind, the possibility cannot be excluded that this letter 'e' in the word "candidate" was not the last word and the last word was "s". If I am right, the word in this endorsement was not "candidate" but "candidates". If the word was "candidates", the case of the petitioners is very much weakened and strength is given to the case of the respondent that this jeep was not used by him exclusively for his election but was used by the Lok Raj Samiti for the election of the various candidates who were sponsored or supported by it.

I may mention that there are two other endorsements on Exhibit P.W. 3/2 in pencil. One endorsement reads "Lok Raj Samiti. Shri Muni Lal. Election Duty." The other endorsement reads: "Duty with Shri H. S. Pal" (Exhibit P.W. 3/3).

The procedure for hiring a vehicle from the Himachal Pradesh Government Transport Department is deposed to by Prem Das Abrol (P.W. 3) in the following words:—

"The person wanting to hire a vehicle has to place a requisition with the Regional Manager. On receipt of the requisition the necessary vehicle is made available to the person wanting the vehicle through the booking clerk. Then a driver is assigned to take the vehicle to the hirer. As soon as a vehicle is hired out a check-slip way-bill is issued and handed over to the Driver as his authority for taking out the vehicle. A log book pertaining to the vehicle is kept in the vehicle. The driver is expected to make entries with regard to the journeys in the way bill issued to him and on the basis of those entries the booking clerk makes corresponding entries in the log book. Uttam Chand was the driver attached to HIM 4235 while Zarfū Mal was the booking clerk concerned." The driver of this jeep, Uttam Chand (P. W. 4) has stated that this jeep was doing election duty with

Muni Lal (R.W. 1) and H. S. Pal (respondent). He has further stated:—

“Generally Muni Lal and his workers used to travel with me in this jeep. Sometime Shri H. S. Pal used to be with them. I do not know why Muni Lal used to go about in this vehicle. Journeys mentioned in Exhibit P.W. 3/2 were performed within Arki Tehsil. I do not know why this vehicle had been taken on hire. Shri Muni Lal must be knowing about it. I was to drive the vehicle according to the instructions of Muni Lal. I cannot say why Muni Lal had taken this vehicle.”

In cross examination he states:—

“As far as I know the vehicle was taken on hire by Muni Lal as it was being run under his instructions and only those persons whom Muni Lal wanted to get into it were allowed to travel. So far as the respondent is concerned I had just given him a lift on one or two occasions if he met us on the way. Muni Lal paid the hire in respect of this vehicle.... According to the practice the signatures of the person under whose instructions journeys were performed had to be taken. As journeys in this case were performed under instructions from Muni Lal, I obtained his endorsement Exhibit P.W. 3/2-A”.

Zarfu Ram (P.W. 5) has admitted that “although the name of H. S. Pal is mentioned on ticket Exhibit P.W. 3/1, the bill for the amount of charges was sent to Lok Raj Samiti. The respondent did not tell me to send the bill to the Lok Raj Samiti.”

If this jeep was really taken by the respondent himself and he was to incur or did actually incur the expenses of this jeep, the aforesaid endorsements by Muni Lal (Ex. P.W. 3/2-A) and the writing in pencil “Lok Raj Samiti. Shri Muni Lal, Election Duty” on the check-slip way-bill (Exhibit P.W. 3/2) are not understandable. On the other hand, if this jeep was taken on hire by Muni Lal as the convener or representative of the Lok Raj Samiti, these endorsements and also the name of the respondent on the transport ticket (Exhibit P.W. 3/1) and Exhibit P.W. 3/3 (which is the check pass statement) are understandable because they show no more than this that this jeep was used in connection with the election of the respondent. This document does not prove either that the hire of this jeep was incurred by the respondent or that its hiring resulting in a pecuniary liability on the respondent was effected by Muni Lal (R.W. 1) under any authorization by the respondent. At best, it shows that this jeep was used in the election of the respondent also.

As to the oral evidence, all that the petitioners have been able to prove is that the respondent used this jeep. Ram Kishan (P.W. 6) has stated that he saw the respondent going about in the Constituency in a jeep on various dates including February 2 and 6, 1967 and thereafter. He also says that this particular jeep was driven by Uttam Chand (P.W. 4). This witness does not remember the registration number of the jeep but Jeep HIM 4235 is identified by naming Uttam Chand (P.W. 4) as its driver. Jagat Ram (P.W. 7) speaks of the respondent going about in a jeep in his village on February 2, 1967 and thereafter every day. He says that the registration number of this jeep was 4235 and its driver was Uttam Ram by which probably he means Uttam Chand (P.W. 4). Karam Chand (P.W. 8) says that he saw the respondent in February, 1967 in jeep bearing registration number HIM 4235 which was driven by Uttam by which he means Uttam Chand (P.W. 4). He is a grand-uncle of the respondent and owed money to him. He says that the respondent's son has told him that his father (meaning the respondent) had spent for the jeep HIM 4235. He further states: “I had owed

some money to the respondent and in this connection he had demanded repayment of the amount from me on 19th February, 1967. I did not go to any office to ascertain, who had incurred the expenditure for this jeep.” Apart from everything else, the testimony of this witness cannot be relied upon by reason of his admitted indebtedness to the respondent.

My conclusion with respect to the check-slip way-bill (Exhibit P.W. 3/2) is that it does not prove that the amount of this bill was incurred by or was paid by ~~it~~ was the liability of the respondent.

The respondent has produced Muni Lal (R.W. 1) to prove the formation and existence of the Lok Raj Samiti. This witness has produced what he calls the minimum programme of the Lok Raj Samiti (Exhibit R.W. 1/1) and its rules (Exhibit R.W. 1/2). It is true that, at the time of the elections, this Samiti had not been recognized under the relevant provisions of the Act. But the evidence is that this Samiti was organized in 1967 immediately prior to the elections by five persons who formed its first executive committee and who were Thakur Sen Negi, Jai Behari Lal Khachi, Lal Chand Stokes, Muni Lal (R.W. 1) and the respondent. None of its records or resolutions has been produced and, such non-production has given rise to an argument by the petitioners that this Samiti was merely a camouflage and that it was the respondent who used the name of this Samiti for the purpose of hiring this jeep so as to avoid showing the expenses incurred on this jeep from his own return of expenses. Even though these records have not been produced, it has been freely admitted by Muni Lal (R.W. 1) that, prior to the elections, there were hardly any records except a minute book which contained a resolution of the Executive Committee authorizing him to look after the elections and account books which contained donations received by this newly formed party and their disbursement and that the funds at the disposal of this Samiti were not very large. It is not unusual for political organisations to be formed in this manner prior to elections; nor is it of any significance that, being a party which had not been recognized under the provisions of the Act, it has not been allotted any symbol of its own. Upon the evidence of Muni Lal (R.W. 1) it is not possible for me to accept the argument and to hold that this Samiti was either non-existent or was a camouflage created by the respondent for his personal ends.

The most that has been proved by the petitioners by the oral and documentary evidence is that this Jeep HIM No. 4235 was used by the respondent during his election. Such use by itself and without anything more cannot constitute a breach of section 77 of the Act by incurring or authorizing expenditure in excess of the limit placed by sub-section (3) of this section. Further a mere connection between the respondent and the Lok Raj Samiti cannot lead to the only conclusion that the expenses with regard to this jeep must have been incurred or authorized by the respondent. In view of the admission by Zarfu Ram (P.W. 5) that the bill (Exhibit P.W. 3/1) for the amount of charges in respect of Jeep HIM 4235 was sent to the Lok Raj Samiti, it is not possible to say that the expenses in relation to this jeep were incurred or authorized by the respondent within the meaning of section 123 (6) of the Act. I, therefore, hold that the petitioners have failed to discharge the burden of proving issue No. 7.

Issue No. 8 runs thus:—

Whether the respondent himself or through his agents and other persons with his consent published statements of facts, which were false and which he did not believe to be true or which he regarded as false in relation to the personal character and conduct of the

opposing candidate Shri Hari Dass as detailed in clauses (i), (ii), (iii) and (iv) of para 5-B of the petition?

The learned counsel for the petitioners has frankly conceded at the time of argument that no evidence has been led by the petitioners on this issue. I, therefore, hold that issue No. 8 has not been proved by the petitioners.

Issue No. 9 runs as under:—

“Whether the respondent by himself or through his agents or by any other person with his consent, has committed the corrupt practice of misleading the voters and creating hatred amongst the voters against the opposing candidate Shri Hari Dass and spreading false propaganda as mentioned in clauses (i), (ii), (iii) and (iv) of para 5-B of the petition?”

Para 5-B of the petition is as follows:—

“False statements and propaganda.

The respondent has published, himself and through his agents and other persons with his consent, or those who were his election agents or supporters, statements of facts, which were false and which he did not believe to be true or regarded as false in relation to the personal character and conduct of Shri Hari Dass, who was the opposing candidate. He also published statements false to his knowledge through himself, through his agent, supporters and other persons with his consent with a view to prejudice the prospects of election of Shri Hari Dass. The statement palpably false were calculated to ween away the voters in large number from exercising their voters in favour of Shri Hari Dass. The following are the particulars of the false statements:—

(i) That on 22nd January, 1967, the respondent and his supporters misled the voters by making false statement that the respondent had been assured from the Centre (Delhi) that in case he came out to be successful, he must be appointed Minister in the Himachal Cabinet and that this time the other candidate Shri Hari Dass will not be taken in the Cabinet even if he succeeds. There should be a Minister from this Constituency for the welfare of that illaqua and that the respondent was the only choice as promised to him by the Central Government, Delhi.

(ii) The respondent deliberately and wilfully misled the voters, who were generally illiterate that in this election the symbol for the Congress was that of Bicycle and they should vote for this symbol only. He and his supporters spread this false propaganda in the Congress circle who were bound to vote for the other candidate, Shri Hari Dass. All this was false to the knowledge of the respondent and his supporters who were doing this with his consent. Since the respondent had fought election on Congress ticket from Kasumpti Constituency in the last General Elections and the symbol allotted to him at that time was that of bicycle, he gave the impression to the Congress voters that, in fact he was the Congress candidate and the symbol allotted to him this time was also that of Bicycle.

(iii) That the respondent and his supporters with his consent, on 17th of February, 1967, in the constituency made further false propaganda against the other contesting candidate Shri Hari Dass, that the later was keeping a Mohammadan woman named Mst. Barkat and was not a real Hindu and he was going to open cow slaughter house at Arki. The respondent and his supporters with his connivance, induced the voters and supporters of Shri Hari Dass not to vote for him and this false propaganda prejudiced the other

candidates to a great extent and the election was not fair.

(iv) That the respondent and his supporters with his consent and connivance made false statements continuously for a week from 10-2-67 to 17-2-67 that the voters this time should not vote for Congress, which is a corrupt body and has given Congress tickets to corrupt people and that they should get money from the Congress candidate and his supporters but not vote for the Congress candidate. They further made wrong propaganda that the Himachal Pradesh Congress has got fabulous amount from the Congress High Command for the distribution of the same among the voters through the supporters of the Congress candidate. This statement was made by the said person to create hatred amongst the voters against the Congress candidate Shri Hari Dass and this prejudiced the Congress candidate to a large extent. They further made false statements that even the supporters of Shri Hari Dass in general and in particular Shri Jagat Ram, Shri Daya Ram Gandhi, Shri Ram Krishan Vaid, Shri Karam Chand (one of the petitioners) and Shri Dhanu Ram have been bribed by the Congress party and its candidate and they were propagating the cause of the Congress on that account only. This statement also affected the fair election to a great extent.”

These allegations have been denied by the respondent in his written statement.

There is no evidence to support the allegations made in paragraph 5-B (i) or paragraph 5-B (ii) or paragraph 5-B (iv).

In so far as the allegations in paragraph 5-B (iii) are concerned, the evidence is scanty and meagre. Ram Kishan (P.W. 6) says in his examination-in-chief that the respondent “spoke against Hari Dass and said that the Congress had no religion or principles. That is all he said.” In cross-examination, he says that the respondent did not really abuse but he said many things against him (Hari Dass). He said that he was associating with Muslims and had kept a Muslim woman in his house.” Jagat Ram (P.W. 7) says in his examination-in-chief: “There was a big meeting on January 28, 1967, in which the respondent spoke. In the election meeting he said something regarding Hari Dass but I do not remember what he said.” Karam Chand, petitioner No. 2, says in his examination-in-chief: “There was one meeting on 4th February, 1967, so far as I remember. The respondent spoke in that meeting. He said that the Congress was spending the money which it had received from Delhi; that voters should take money from the Congress and vote for whomsoever they pleased; that Hari Dass, the Congress candidate had kept a Muslim woman in the house and that all Congress workers had taken money. I was also working for the Congress. All these things were correct. Again said, my statement is correct. The things that respondent said about Hari Dass and about Congress workers taking money were false.” In cross-examination, he really shows his ignorance about this meeting because he says:

“I do not know who else spoke in the meeting on 4th February, 1967, which was addressed by the respondent, because I had left after listening to his speech, from the road. There were no chairs in that meeting.”

On this evidence it is not possible to hold that the statements imputed to the respondent which are subject matter of paragraph 5-B (iii) were made by the respondent.

This issue is based upon sub-section (4) of section 123 of the Act. The corrupt practice contemplated by this sub-section is:

"the publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election."

What the petitioners had, therefore, to prove was (1) that the impugned statement was made; (2) that it was false; (3) that the candidate believed that statement to be false or did not believe it to be true; (4) the statement is in relation to the personal character or conduct of any candidate etcetra and (5) is a statement reasonably calculated to prejudice the prospects of that candidate's election. Even if it be assumed that the impugned statements were made by the respondent, they have not been proved to be statements which were false. The only person who could have proved the falsity of these statements was Hari Dass, the defeated candidate, but he has not appeared in the witness-box. Nor has it been proved that these statements even if made, were statements reasonably calculated to prejudice the prospects of the defeated candidate's election.

I have, therefore, no hesitation in holding that the petitioners have not succeeded in proving any part of issue No. 9 which is, accordingly, decided against the petitioner.

In the result, the petition fails and is dismissed with costs. The respondent's costs are assessed at Rs. 2,000 to be paid by the petitioners.

In accordance with the provisions of section 99 of the Act, I hereby record that corrupt practices were alleged against the respondent as contemplated by section 123 (4) and section 123 (6) of the Act and I have found that these corrupt practices were not committed by the respondent.

October 20, 1967.

Seal.

True Copy.

Sd/-

Superintendent,

Delhi High Court, Himachal Bench.

Sd/-

S. N. ANDLEY. J.

By order,

D. R. DHAMIJA,
Chief Electoral Officer.

ELECTION DEPARTMENT

NOTIFICATION

Simla-2, the 12th February, 1968

No. 4-29/67-Elec. —In pursuance of the provisions of sub-section (3) of section 4 of the Punjab Small Towns Act, 1921 (II of 1922) as applied to Himachal Pradesh, and rule 55 of the Himachal Pradesh Town Committee Election Rules, 1963, the Administrator (Lieutenant Governor), Himachal Pradesh, is pleased to notify the names of candidates shown in column 3 of the table given below as having been elected as members of the Small Town Committee, Theog from the constituencies specified in column 2 of the said table:—

TABLE

Sl. No.	Name of the constituency	Name of the elected member	Address
1	2	3	4
1.	Ward No. 1	Shri Gian Chand	S/o Shri Nand Lal, Janog Ghat Theog.
2.	Ward No. 2	Shri Roshan Lal	S/o Shri Munshi Ram, Prem Ghat, Theog.
3.	Ward No. 3	Shri Shiv Singh	Court Compound, P. O. Theog. District Mahasu.
4.	Ward No. 4	Shri Narinder Lal.	S/o Shri Bansi Lal, r/o Shali Bazar, P.O. & Tehsil Theog.
5.	Ward No. 5	Shri Hari Singh	Leather Merchant, P.O. Theog, Shali Bazar, Theog, District Mahasu.
6.	Ward No. 6	Shri Bishan Swaroop.	Shali Bazar Theog.

By order,
D. B. LAL,
Secretary.

अनुपूरक

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